

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

I. DISPUTE

1. a. Whether there should be additional reimbursement for dates of service 03/01/01 through 04/17/01?
b. The request was received on 02/08/02.

II. EXHIBITS

1. Requestor, Exhibit 1:
 - a. TWCC 60 and Letter Requesting Dispute Resolution 04/16/02
 - b. HCFA's
 - c. EOB
 - d. Medical Records
 - e. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit 2:
 - a. TWCC 60 and Response to a Request for Dispute Resolution
 - b. HCFA's
 - c. Audit summaries/EOB
 - d. Medical Records
 - e. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. Per Rule 133.307 (g)(3), the Division forwarded a copy of the requestor's 14 day response to the insurance carrier on 04/23/02. Per Rule 133.307 (g)(4), the carrier representative signed for the copy on 04/24/02. The response from the insurance carrier was received in the Division on 05/06/02. Based on 133.307 (i) the insurance carrier's response is timely.
4. Notice of Medical Dispute is reflected as Exhibit #3 of the Commission's case file.

III. PARTIES' POSITIONS

1. Requestor: letter dated 04/16/02
"The services provided are for chronic pain management, CPT Code 97799-CPAP. The TWCC Fee Guidelines do not set a fee for CPT 97799-CPAP, but state that they are to be paid DOP or dependent on the procedures documented. (Provider's) position is that the fees paid for these services by the carrier were not 'fair and reasonable.'"

2. Respondent: letter dated 05/06/02
“(Carrier) reimburses these services at a fair and reasonable rate of \$125 per hour for an accredited provider and \$100.00 for a non-CARF accredited facility. This is the result of extensive review of all identifiable Chronic Pain Management Programs across the state of Texas. All contacted providers found our consistent reimbursement of \$125 per hour to be acceptable.”

IV. FINDINGS

1. Based on Commission Rule 133.307 (d)(1&2), the only dates of service eligible for review are those commencing on 03/01/01 and extending through 04/17/01.
2. The provider billed 232 hours of chronic pain management on the dates of service in dispute, at the rate of \$175.00 per hour. Total billed equals \$40,600.00.
3. The carrier generally reimbursed at the rate of \$125.00 per hour with the EOBs having the denial “M – REDUCED TO FAIR AND REASONABLE.” The carrier reimbursed \$106.25 per hour on dates of service 04/02/01 through 04/13/01, but there is no reason given for the exception to \$125.00 per hour reimbursement rate. The carrier paid \$0.00 for dates of service 04/16/01 and 04/17/01 with the EOB having the denial “A – PRE-AUTHORIZATION NOT OBTAINED.” The total amount reimbursed by the carrier is \$25,950.00.
4. The amount in dispute is \$14,650.00, the difference between the billed amount and the amount reimbursed.
5. The provider is entitled to additional reimbursement of \$3,050.00.

V. RATIONALE

The dispute has two issues, 1) whether the provider obtained preauthorization as required for dates of service 04/16/01 and 04/17/01 and 2) what represents “fair and reasonable” reimburse for the services rendered.

The provider’s dispute packet contains a letter to the carrier, dated 11/02/01, sent with the provider’s request for reconsideration. In regard to dates of service 04/16/01 and 04/17/01 the letter states, “was denied stating no preauth, however preauth was obtained and that number is AJ17A1-06-01. The expiration date was extended to 04/18/01, therefore this claim should be paid.” The bill for these two dates of service has this preauthorization number. All bills for the other dates of service have the preauthorization number AJ17A1-05. Based on the available documentation it appears the provider did receive preauthorization and is due reimbursement for the 16 hours billed on the two dates of service in dispute. Therefore, the provider is entitled to reimbursement of the 232 hours billed on the dates of service in dispute.

The remaining issue is what represents a “fair and reasonable” per hour reimbursement for the 232 hours billed on the dates of service in dispute.

Section 413.011 (d) of the Texas Labor Code states, “Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees

charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines."

Commission Rule 133.304 (i)(1-4) places certain requirements on the carrier when reducing the billed amount to fair and reasonable. The carrier has submitted their methodology and though, the entire methodology may not necessarily be concurred in by the Medical Review Division, the requirements of the referenced Rule have been met.

The provider has submitted reimbursement data. The provider's Attachment 1 has EOBs from other carriers that show reimbursement of \$175.00 per hour, the billed amount. The provider's Attachment 2 contains a list of 45 different carriers. This list indicates that the provider has received reimbursement as low as \$88.00 per hour to a high of \$175.00 per hour.

Due to the fact that there is no MAR for chronic pain management, the Medical Review Division has to determine what would be fair and reasonable reimbursement for the services provided. The carrier has submitted reimbursement data to explain how it arrived at what it considers fair and reasonable reimbursement and that meets the requirements of Rule 133.304. The provider has submitted EOBs from other carriers in an effort to document fair and reasonable reimbursement. Regardless of the carrier's methodology or response, the burden remains on the provider to show that the amount of reimbursement requested is fair and reasonable. The provider own reimbursement log indicates that reimbursements have ranged from \$88.00 per hour to \$175.00 per hour. An analysis of recent decisions of the State Office of Administrative Hearings indicate minimal weight should be given to EOBs for documenting fair and reasonable reimbursement. The willingness of some carriers to reimburse at or near the billed amount does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011(d) of the Texas Labor Code. The EOBs provide no evidence of amounts paid on behalf of managed care patients or on behalf of other non-workers' compensation patients with an equivalent standard of living. Based on the evidence available for review, the Requestor has not established that the \$175.00 per hour requested is "fair and reasonable" or that the \$125.00 reimbursed by the carrier is not "fair and reasonable."

The provider is entitled to total reimbursement of \$29,000.00 (232 hours at the rate of \$125.00 per hour). The carrier has reimbursed \$25,950.00 to date. Therefore, the provider is entitled to additional reimbursement of \$3,050.00.

The above Findings and Decision are hereby issued this 10th day of June, 2002.

Larry Beckham
Medical Dispute Resolution Officer
Medical Review Division

VI. ORDER

Pursuant to Sections 402.042, 413.016, 413.031, and 413.019 the Medical Review Division hereby ORDERS the Respondent to remit \$3,050.00 plus all accrued interest due at the time of payment to the Requestor within 20 days receipt of this order.

This Order is hereby issued this 10th day of June, 2002.

Carolyn Ollar, RN, BA
Medical Dispute Resolution Supervisor
Medical Review Division

CO/lb

This document is signed under the authority delegated to me by Richard Reynolds, Executive Director, pursuant to the Texas Workers' Compensation Act, Texas Labor Code Sections 402.041 - 402.042 and re-delegated by Virginia May, Deputy Executive Director.